IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

OP.No. 2251 of 1999(R)

PETITIONER:

SMT.INDIRA RAMESAN, AGED 56,
W/O.G.RAMESAN, RESIDING AT
'SUMTHRUPTHY', EAST FORT,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:
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1. **STATE OF KERALA REP.BY**
   THE SECRETARY, DEPT. OF HOME,
   GOVERNMENT OF KERALA, TRIVANDRUM.

2. **SHRI K.K. JAYASOORYAN, ADOVATE,**
   AYYANTHOL, TRICHUR.

3. **K.G.PREMSANKAR,**
   MANAGING DIRECTOR, THE KERALA STATE
   INLAND NAVIGATION CORPORATION,
   VALANJAMBALAM, KOCHI.

BY ADV. SRI.SUJITH MATHEW JOSE
GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON 27/07/2007 DELIVERED THE FOLLOWING:

OP. NO.2251/1999

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- GOVT.ORDER DT. 15.1.97 REJECTING THE REQUEST OF THE 3RD RESPONDENT FOR APPOINTMENT OF A SPECIAL PUBLIC PROSECUTOR.

EXT.P2:- GOVT.ORDER G.O.(RT) NO.4806/98/HOME DT. 7.11.98 APPOINTING SRI.K.K.JAYASURYAN, ADVOCATE, THE 2ND RESPONDENT AS THE SPECIAL PUBLIC PROSECUTOR ON THE REQUEST OF THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R3(1):- COPY OF THE GOVERNMENT CIRCULAR NO.61153/C2/91/HOME DT. 25.3.92.

EXT.R3(2):- COPY OF THE LETTER OF THE COMMISSIONER OF POLICE, TRIVANDRUM CITY DT. 4.6.96.

EXT.R3(3):- COPY OF THE LETTER OF THE DISTRICT COLLECTOR TRIVANDRUM DT. 11.6.96.

EXT.R3(4):- COPY OF THE LETTER OF THE ADDL.CHIEF SECRETARY, GOVERNMENT OF KERALA NO.15059/C2/96/HOME DT. 15.1.97.

EXT.R3(5):- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN OP. NO.16859/96 DT. 13.7.98.

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

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O.P.NO. 2251 OF 1999

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DATED THIS THE 27TH JULY 2007

JUDGMENT

The petitioner, who is the 2nd accused in S.C.No. 42/1996 in the file of the Ist Additional Sessions Judge, Thiruvananthapuram, has sought for setting aside Ext.P2 order of the Government appointing R2 as the Special Public Prosecutor to conduct the cases on behalf of the 3rd respondent, the complainant therein with respect to S.C.No.42/1996 and S.C.72/1991.

2. At the time of hearing, counsel for the petitioner confined his plea with respect to appointment of the Special Public prosecutor to conduct the prosecution in S.C.No.42/1996 which originated on the basis of the private complaint instituted by 3rd respondent. R3 is a high ranking police official. He is the former son-in-law of the petitioner who is estranged with the

family. The allegation is that on 6-7-1989 at about 5 p.m. there was an assault on R3 by the petitioner's son and the driver. On the basis of the information, the Museum Police Thiruvananthapuram registered Crime No. 172/1989. In the investigation the petitioner was found not involved and her name was deleted from the array of the accused and the charge sheet was submitted before the court in C.P.No.24/1990. It is submitted that on 5-1-1991, i.e. long after the incident, with the mala fide motive of harassing the petitioner, the third respondent filed a private complaint before the Judicial Magistate of Second Class, Thiruvananthapuram alleging offences under Sections 307, 114 and 34. In fact, the entire case was a counter blast to the registration of crime No. 171/1989 on the basis of the allegation that the 3rd respondent with his service rifle attacked the son of the petitioner as a result of which he was injured and that there was an attempt to shoot him. In fact the petitioner had only gone to visit her daughter in the house built by the petitioner's husband on hearing that the petitioner's

daughter was tortured by her husband, 3rd respondent, who is a police officer. The petitioner's son Biju Ramesh was assaulted by the 3rd respondent and he had to abandon his car and take shelter in a nearby Minister's house. As the 3rd respondent was a police officer, on account of his influence the complaint filed by the son of the petitioner was not properly investigated. The case registered by the police on the influence of the third respondent is pending as S.C.NO.72/1991. The proceedings initiated as Crl.M.C.No. 560/1991 to quash the proceedings initiated in the private complaint under Section 482 Cr.P.C. was dismissed by this Court. Subsequently, the third respondent moved this Court vide O.P.No. 1689/1996 and obtained a stay of further proceedings in S.C.No.72/1991 and S.C.No.42/1996 on the basis that he had moved for appointment of a Special Public Prosecutor. The above O.P. was disposed of directing the Government to consider his application. The Government rejected the above request vide Ext.P1 order. The above order was set aside by this Court as no reasons have been mentioned.

Subsequently the Government passed Ext.P2 order appointing Special Public Prosecutor to conduct both the cases. There were so many proceedings pending in different courts in between the daughter of the petitioner and the third respondent relating to divorce, custody of children etc. The 2nd respondent who was appointed as a Special Public Prosecutor was the legal advisor of the petitioner in all the above cases. The appointment of such a person is contrary to public interest as the Public Prosecutor is expected to be dispassionate, impartial and totally unconnected with the issues of the case. He was also the counsel for R3 when the private complaint was filed which was subsequently committed and numbered as S.C.No.42/1996. It is pointed out that the appointment of Special Public Prosecutor can be made only when a public cause is involved as held in the decision in **Mukul Dalal v. Union of India , (1988) 3 S.C.C.144** in the instant case, i.e. S.C.No.42/1996 is based on a private complaint and it is only the personal cause of the 3rd respondent that is involved. He has also cited the decision in **P.G.Narayanan**

Kutty v. State of Kerala, 1982 (2)Crl.L,.J.2085 to the above effect which is upheld by the Supreme Court. The Government Law Officers Rules also specifies that Special Public Prosecutor is to be appointed only in a case where the Government has substantial interest.

3. The first respondent State has filed a counter affidavit asserting its right to appoint the special public prosecutor in the instant case. It is pointed out that the earlier petition filed by the 3rd respondent to have the Special Public Prosecutor appointed were rejected as a competent Public Prosecutor was handling the case. Thereafter, this Court as per order in O.P.No.16859/1996 set aside the above order and directed the Government to reconsider the matter in the light of the guidelines issued by the Government in Circular No. 61153/C2/91/Home dated 25-3-1992. As per the above circular, the Special Public Prosecutor will be permitted only in very exceptional circumstances where the cases involved are highly sensational or of extensive public interest. According to clause (b) of the

circular, the appointment will be made only after consultation with the District Collector, Superintendent of Police and Director General of Prosecution. The Director General of Prosecution has opined that the case involved public importance and fell within the purview of the Government Circular. The District Collector has supported the appointment of the Special Public Prosecutor. According to the Government, the instant case is a sensational one as an I.G.P.is the alleged victim.

4. The third respondent has filed a detailed counter affidavit supporting the case of the Government that the appointment of the special public prosecutor is fully justified. He has produced the copy of the Government Circular in this regard. He has denied the allegation that the 2nd respondent, the person appointed as Special Public Prosecutor was his counsel in all the cases and hence, there is no case for any bias on the part of the 2nd respondent in his favour. It is pointed out that in Crime No. 172/1989 the petitioner was absolved only on account of her husband's political influence and money power. It was on her

exhortion that her son attempted to kill the deponent by dragging him through the street on the foot of a Contessa car with other accused. In fact the deponent has saved by his driver who blocked the way and passers by who surrounded, the petitioner's son and others. It is also pointed out that the husband of the petitioner, who is an Abkari Contractor had easy access to the Excise Minister's residence to where her son escaped. He has asserted that the case was a sensational one.

5. The petitioner has filed reply affidavit refuting the allegations made by the 3rd respondent to which the 3rd respondent has also filed an additional counter affidavit.

6. I find that in circular No. 61153/2002/91/Home dated 25-3-1992 the copy of which has been produced by the third respondent himself, it is specified that the appointment of special pubic prosecutors will be permitted only in very exceptional circumstances where the cases involved are highly sensational or have extensive public interest. The contention of 3rd respondent is that he being a high ranking police official, the

incident was treated as highly sensational. Even if the above contention is taken for granted, I find that there is something unethical in a special public prosecutor being appointed in the present matter on the basis of the investigation conducted by the police, the petitioner, a lady has been absolved from the alleged crime. The special public prosecutor is appointed in a case wherein the Governmental machinery itself has arrived at a finding that the petitioner is not involved in the incident. As per the circular cited above, the appointment of a special public prosecutor will be permitted only in very exceptional circumstances. It appears that the very exceptional circumstances found by the Government is evidently in a negative sense. I find that the appointment of a special public prosecutor in the instant case, i.e. in S.C.42/96 is in flagrant violation of the above cited Government circular. The decision of the Supreme Court in **Mukul Dalal v. Union of India(1988)3 S.C.C.144** fully support the above view of the matter. In the circumstances, the original petition is allowed and the order vide

Ext.P2 appointing the 2nd respondent as the Special Public Prosecutor to conduct the case in S.C.42/96 in the file of the Ist Additional Sessions Court, Thiruvananthapuram is herewith quashed.

7. Counsel for 3rd respondent has sought for a time bound direction to the court below to dispose of the cases as the same are long pending. The court below is directed to consider this aspect.

The O.P. is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

O.P. NO. 2251 OF 1999
JUDGMENT

27-7-2007